

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>In re:</b>	:	<b>CHAPTER 7</b>
	:	
<b>DEBORAH SUSAN MESSNER</b>	:	<b>BANKRUPTCY NO. 09-13701(JKF)</b>
<b>a/k/a DEBORAH SUSAN GASKILL</b>	:	
	:	
<b>Debtor</b>	:	
	:	
<b>CHRISTINE C. SHUBERT, Chapter 7</b>	:	
<b>Trustee for the Estate of Deborah Susan</b>	:	
<b>Messner a/k/a Deborah Susan Gaskill</b>	:	
	:	
<b>Plaintiff</b>	:	
	:	
<b>v.</b>	:	<b>ADVERSARY NO. 09-349(JKF)</b>
	:	
<b>BARBIERI AND ASSOCIATES</b>	:	
	:	
<b>Defendant</b>	:	
	:	

**CONSENT ORDER RESOLVING (1) COMPLAINT OF CHRISTINE C.  
SHUBERT, CHAPTER 7 TRUSTEE, TO AVOID AND RECOVER  
PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. §§ 547 AND 550  
AGAINST BARBIERI AND ASSOCIATES AND (2) COUNTERCLAIM ASSERTED  
BY BARBIERI AND ASSOCIATES AGAINST THE CHAPTER 7 TRUSTEE**

**THIS CONSENT ORDER** (the "Consent Order"), by and between Christine C. Shubert, Esquire, Chapter 7 Trustee (the "Trustee") for the estate of Deborah Susan Messner (the "Debtor") and the plaintiff herein (the "Plaintiff"), by and through her counsel, Maschmeyer Karalis P.C., and Barbieri and Associates, the defendant herein (the "Defendant").

**BACKGROUND**

- A. On May 19, 2009 (the "Petition Date"), the Debtor filed for protection under Chapter 7 of the Bankruptcy Code.
- B. On May 20, 2009, the Trustee was appointed and is so acting.

C. On November 10, 2009, the Trustee filed a complaint (the "Complaint") against the Defendant seeking the return of certain funds (the "Funds") in the amount of \$22,000.00 pursuant to the provisions of 11 U.S.C. §§ 547 and 550.

D. On November 16, 2009, the Defendant filed an answer to the Complaint and a counterclaim (the "Counterclaim") against the Plaintiff.

E. The Funds originated from a Qualified Domestic Relations Order creating an Individual Retirement Account (the "IRA") for the Debtor.

F. As the Funds were transferred out of the IRA to the Defendant, the Funds lost their status as exempt assets upon receipt by the Defendant.

G. As such, the holding and reasoning of Rousey v. Jacoway, 544 U.S. 320 (2005) is not applicable.

**NOW, THEREFORE**, the foregoing Background being incorporated herein and made a part hereof, and with the agreement of the parties, it is hereby **ORDERED** as follows:

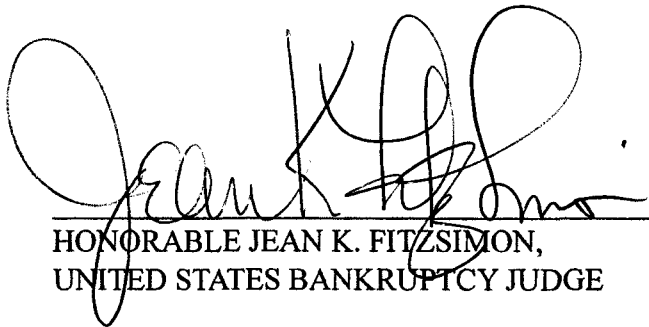
1. The Defendant shall turnover to the Plaintiff the sum of \$22,000.00 (the "Settlement Amount") in full and final satisfaction of the causes of action asserted in the Complaint<sup>1</sup>.
2. The Counterclaim is hereby dismissed with prejudice.
3. No term or provision of this Consent Order may be varied, changed, modified, waived, discharged or terminated orally, but only by an instrument in writing signed by

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<sup>1</sup> The Plaintiff acknowledges receipt of a check from the Defendant representing the Settlement Amount.


the party against whom the enforcement of the variation, change, modification, waiver, discharge or termination is sought, and approved by an order of the Court.

**BY THE COURT:**

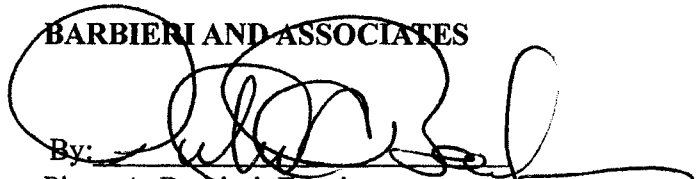
  
2/02/10  
HONORABLE JEAN K. FITZSIMON,  
UNITED STATES BANKRUPTCY JUDGE

**CONSENT IS HEREBY GIVEN  
TO THE FORM, SUBSTANCE AND  
ENTRY OF THE WITHIN ORDER:**

**MASCHMEYER KARALIS P.C.**

By:   
Paul B. Maschmeyer, Esquire  
Robert W. Seitzer, Esquire  
1900 Spruce Street  
Philadelphia, PA 19103  
(215) 546-4500  
Attorneys for the Plaintiff/Trustee

**BARBIERI AND ASSOCIATES**

By:   
Pietro A. Barbieri, Esquire  
657 Exton Commons  
Exton, PA 19341  
(610) 280-7078  
Attorneys for the Defendant